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ABSTRACT

This bulletin edition provides a side-by-side comparison of: (1) statutory provisions of Part B of the Individuals with Disabilities Education Act, as modified by the Education of the Handicapped Act Amendments of 1990 (Public Law 101-476); (2) the U.S. Department of Education's explanation for regulatory changes proposed to implement the statutory revisions; and (3) regulatory language proposed by the Department. Proposed changes to other regulatory provisions are also presented, as developed by the Department based on its experience in administering the Part B program. Minor or technical changes are not included. The side-by-side comparison covers definitions of autism, traumatic brain injury, rehabilitation counseling, social work services, assistive technology device, assistive technology service, and transition services. In the area of transition planning, changes focus on participants in Individualized Education Program (IEP) meetings, content of IEPs, and agency responsibilities. Changes in provisions for the Comprehensive System of Personnel Development focus on adequate supply of qualified personnel, personnel preparation/continuing education, and a data system. Changes in procedural safeguards cover additional state consent requirements, availability of hearing decisions, officials conducting state level reviews, state complaint procedures, complaint procedures a state must adopt, and minimum state complaint procedures. Modifications to the regulations for Child Find for infants and toddlers are also presented. (JDD)

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See Inside for a 'Side-by-Side' Profile of Proposed Changes in New IDEA Regulations

On August 19, 1991, the U.S. Department of Education published in the Federal Register a Notice of Proposed Rulemaking (NPRM) to implement changes in Part B of the Individuals with Disabilities Education Act made by the Education of the Handicapped Act Amendments of 1990 (P.L. 101-476), and to implement certain other changes proposed by the Department.

This edition of the Liaison Bulletin provides a side-by-side comparison of the IDEA statutory provisions which were added or modified by the 1990 EHA Amendments (where applicable), the Department of Education's explanation for the regulatory changes it proposes in order to implement the statutory revisions, and the regulatory language proposed by the Department.

NASDSE has prepared this document to facilitate review of the proposed regulatory changes in light of the corresponding statutory provisions and, where applicable, the Department's rationale for the changes it proposes.

In addition to changes resulting from the 1990 EHA Amendments, the Department proposes in its NPRM to revise other regulatory provisions, based on what it calls " . . . the Department's experience in administering [the Part B] program."

The comparison provided in this document is organized by topic, and in most cases by the order in which the proposed regulations would appear in the Part 300 regulations. This document includes only what NASDSE considers to be proposals for major substantive changes in the regulations.

Not included in this document, although included in the August 19, 1991 NPRM, are what NASDSE considers to be minor or technical changes, such as changing the term "annual program plan" to "State plan" wherever it appears in the regulations.

NASDSE has prepared this document to facilitate review of the proposed regulatory changes in light of the corresponding statutory provisions and, where applicable, the Department's rationale for the changes it proposes.

The U.S. Department of Education is accepting comments and recommendations from the public on the NPRM *until November 18, 1991.* Commenters should identify the specific sections of the proposed regulations that each comment is addressing by including a reference to the section and, if appropriate, the specific paragraph to which each comment relates prior to stating the comment. All comments concerning the proposed regulations should be addressed to:

Ms. Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW, Switzer Building, Room 3615, Washington, DC 20202-2720; (202) 732-1104, (202) 732-1090 for TDD services.

A copy of the full text of the NPRM can be found at pages 41265-41275 of the August 19, 1991 Federal Register, or can be obtained by contacting Ms. Sleger.

NASDSE acknowledges Ms. Linda Lewis, Director, Governmental Relations, for preparing this side-by-side profile.

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STATUTORY LANGUAGE

DEFINITIONS OF AUTISM AND TRAUMATIC BRAIN INJURY

Sec. 602 (a)(1)

(1) The term 'children with disabilities' means children --

(A) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities

AUTISM

None

(Categories of disability are not defined in statute but, rather only in regulation

EXPLANATION FOR NPRM

Definitions of Autism and Traumatic Brain Injury

Section 602(a)(1) of the Individuals with Disabilities Education Act (Act) now designates "autism" and "traumatic brain injury" as separate disability categories in the definition of "children with disabilities," and paragraph (a) of the regulatory definition of "handicapped children" at 34 CFR Sec. 300.5 is amended to reflect this statutory change. The new paragraphs (b)(1) and (b)(12) of Sec. 300.5 also add proposed definitions of "autism" and "traumatic brain injury."

Autism

The proposed definition of the disability category "autism" in the new Sec. 300.5(b)(1) applies to children with a developmental disability that significantly affects verbal and non-verbal communication and social interaction, that is generally evident before age three, and that adversely affects educational performance. The Secretary emphasizes that the reference to age three in the definition was included because this is the accepted definition of autism used by most special educators and medical and health professionals. However, nothing in the proposed definition is intended to preclude a diagnosis of autism if the child manifests the condition after age three. Thus, under the proposed definition, a child who manifests characteristics of the condition after age three still can be diagnosed as having autism, and a comment to this effect has been added following proposed Sec. 300.5. Based on the legislative history of the 1990 Amendments, the Secretary proposes that the definition of "autism" not include children with characteristics of "serious emotional disturbance," as that disability category is defined at Sec. 300.5(b)(8) of the current regulations, redesignated as Sec. 300.5(b)(9). In accordance with this statutory change, paragraph

PROPOSED REGULATION

Section 300.5(b)(1) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects educational performance. Characteristics of autism include -- irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability serious emotional disturbance, as defined in paragraph (b)(9) of this section.

Comment. If a child manifests characteristics of the disability category "autism" after age three, that child still could be diagnosed as having "autism" if the criteria in paragraph (b)(1)of this section are satisfied.

STATUTORY LANGUAGE	EXPLANATION FOR NPRM	PROPOSED REGULATION
	(b)(7)(i) of Sec. 300.5 of the current regulations, redesignated as proposed Sec. 300.5(b)(8)(i), which includes children with an "autistic condition" under "other health impaired," has been deleted.	
TRAUMATIC BRAIN INJURY	**Traumatic Brain Injury**	
None Categories of disability are not defined in statute, but, rather, only in regulation.	The proposed definition of the disability category "traumatic brain injury" in proposed Sec. 300.5(b)(12) applies to children with brain injuries caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.	**Section 300.5(12)** "Traumatic brain injury" means an injury to the brain caused by an external physical force or by an internal occurrence such as stroke or aneurysm, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgement; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.
RELATED SERVICES		
Rehabilitation Counseling	**Rehabilitation Counseling**	
Sec. 602(a)(17) (17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation and social work services, and medical and counseling services, including rehabilitation counseling, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.	The new proposed paragraph (b)(10) of Sec. 300.13 adds a definition of "rehabilitation counseling services" to implement the statutory amendment to the definition of related services in section 602(a)(17) of the Act. The Secretary proposes to define "rehabilitation counseling services" as counseling services provided by a qualified rehabilitation counseling professional that are intended to explore the effect of the student's disability on employment and other post-school activities. Based on discussions in the legislative history indicating congressional intent that other agencies should not be relieved of their responsibility for providing rehabilitation services to eligible students with disabilities, the proposed definition includes those services provided to students with disabilities by vocational	**Section 300.13(b)(10)** "Rehabilitation counseling services" means services provided by a qualified rehabilitation counseling professional, in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

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STATUTORY LANGUAGE

SOCIAL WORK SERVICES

See above (Sec. 602(a)(17)

EXPLANATION FOR NPRM

rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

Social Work Services

The statute now specifies that social work services are an eligible related service under this program. A definition of "social work services in schools" was previously included at Sec. 300.13(b)(11) of the current regulations for this program. In light of the statutory amendment, the Secretary proposes to delete the reference to "in schools" so as to broaden the scope of eligible social work services under this program, but otherwise proposes to retain the existing definition at the redesignated proposed Sec. 300.13(b)(12). **However, the Secretary has included the complete regulatory definition, with the deletion of "in schools" in these proposed regulations, and invites public comment on whether this definition should be retained or whether additional regulatory guidance should be provided.**

Assistive Technology Devices and Services

In proposed Secs. 300.16-300.17, the Secretary adopts the statutory definitions of the terms "assistive technology device" and "assistive technology service" in section 602(a)(25)-(a)(26) of the Act, but has substituted "child with a disability" for the statutory reference to "individual with a disability" in accordance with Part B. The definitions of "assistive technology device" and "assistive technology service" in the Act are taken directly from the Technology-Related Assistance for Individuals with Disabilities Act of 1988, and a comment has been added following proposed Sec. 300.17 to this effect.

PROPOSED REGULATION

Section 300.13(b)(12) "Social work services" include --

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

STATUTORY LANGUAGE

ASSISTIVE TECHNOLOGY DEVICE

Sec. 602(a)(25)

(25) The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

ASSISTIVE TECHNOLOGY SERVICE

Sec. 602(a)(26)

(26) The term 'assistive technology service' means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes --

(A) the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

(F) training or technical assistance for professionals (including individuals providing education and

EXPLANATION FOR NPRM

PROPOSED REGULATION

Sec. 300.16 Assistive technology device. As used in this part, "assistive technology device" means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

Sec. 300.17 Assistive technology service. As used in this part, "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes -- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices;
(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
(e) Training or technical assistance for a child with a disability, or if appropriate, that child's family; and
(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

Comment. The definitions of "assistive technology device" and "assistive technology service" used in this part are taken directly from section 602(a)(25)-(26) of the Act, but in accordance with

STATUTORY LANGUAGE

rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

ASSISTIVE TECHNOLOGY

None

TRANSITION SERVICES - DEFINITION

Sec. 602(a)(19)

(19) The term 'transition services' means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community

EXPLANATION FOR NPRM

Assistive Technology

Because the Secretary believes that the role of assistive technology devices and services in the education of children with disabilities needs to be addressed, proposed Sec. 300.308 has been added. This section provides that if a child with a disability requires assistive technology devices or services, or both, in order to receive a free appropriate public education, the public agency shall ensure that the assistive technology devices or services are made available to that child, either as special education, related services, or as supplementary aids and services that enable a child with a disability to be educated in regular classes. Determinations of whether a child with a disability requires assistive technology devices or services under this program must be made on an individual basis through applicable individualized education program (IEP) and placement procedures. **The Secretary invites public comment on whether additional guidance is needed on the provision of assistive technology devices or services to children with disabilities under this part.**

Transition Services

In proposed Sec. 300.18, the Secretary adopts the definition of "transition services" in section 602(a)(19) of the Act, which defines "transition services" as "a coordinated set of activities * * * to facilitate movement from school to post-school activities." Since the statutory definition specifies a range of services that could constitute transition services, the Secretary proposes in the comment following Sec. 300.18 that transition services may be provided to eligible students with disabilities either

PROPOSED REGULATION

Part B, the statutory reference to "individual with a disability" has been replaced with "child with a disability." The Act's definitions of "assistive technology device" and "assistive technology service" incorporate verbatim the definitions of these terms used in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

Sec. 300.308 Assistive technology.
(a) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in Secs. 300.16-300.17, are made available to any child with a disability who requires an assistive technology device or service in order to receive a free appropriate public education.
(b) Assistive technology devices and assistive technology services for children with disabilities may be provided as special education, related services, or, in the case of children with disabilities to be educated in regular classes, as supplementary aids and services.

Sec. 300.18 Transition services. As used in this part, "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the individual student's needs, taking

STATUTORY LANGUAGE

participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate,

acquisition of daily living skills and functional vocational evaluation.

PARTICIPANTS IN MEETINGS

None

EXPLANATION FOR NPRM

as special education, if they are specially designed instruction, or as related services, if they are required to assist a child with a disability to benefit from special education.

In addition, the Secretary proposes to amend the current regulations governing IEPs to include the new statutory requirements regarding transition services and to provide additional regulatory guidance on agency responsibility for providing and paying for needed transition services to students with disabilities.

Participants in Meetings

The Secretary also believes that some modifications are needed in the current regulations governing participants at IEP meetings to ensure appropriate consideration of each student's need for transition services. In order to ensure that these IEP meetings include all necessary participants, the Secretary proposes to add paragraph (c) to Sec. 300.344 to require the participation of (1) a representative of the public agency responsible for providing or supervising the provision of transition services, and (2) if appropriate, a representative of each participating agency responsible for providing or paying for needed transition services. The Secretary also proposes to add Comment 2 to Sec. 300.344 to clarify that the public agency responsible for the student's education must ensure that, if appropriate, the student participates at IEP meetings regarding transition services. This comment is derived from the statutory language defining these services as a "coordinated set of activities *** based upon the individual student's needs, taking into account the student's preferences and interests."

The Secretary particularly invites public comment on whether these proposed regulations will ensure that eligible students with disabilities receive needed transition services or whether additional regulatory guidance should be provided.

PROPOSED REGULATION

into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Comment. Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The listed activities in the definition of transition services are not exhaustive, but "are only examples of different types of post-school activities."

Sec. 300.344 Participants in meetings.

(c) Transition services personnel. For students with disabilities aged 16 years and older, and for students below age 16 whose need for transition services is being considered, the public agency shall ensure that any meeting to develop, review, or revise the student's individualized education program includes --

(1) A representative of the public agency responsible for providing or supervising the provision of transition services; and

(2) If appropriate, a representative of each other participating agency providing the transition services included in the student's individualized education program.

Comment 2. The definition of transition services in the Act and in this part states that these services are a "coordinated set of activities *** based on the student's needs, taking into account the student's preferences and interests." Thus, if appropriate, the public agency responsible for the student's education must include the student at an individualized education program meeting to ensure that the transition services component of the student's individualized education program addresses the student's needs, preferences and interests.

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STATUTORY LANGUAGE

CONTENT OF IEP

Sec. 602(a)(20)

(20) The term 'individualized education program' means a written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include --
***
(D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting, ***

AGENCY RESPONSIBILITIES FOR TRANSITION SERVICES

Sec. 602(a)(20)

In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

EXPLANATION FOR NPRM

Content of IEP

Section Sec. 300.346 of the current regulations is amended by adding a new proposed paragraph (d) to incorporate the new statutory provision that a statement of needed transition services must be included in the IEPs of students with disabilities aged 16 and older, and, to the extent appropriate, in the IEPs of students with disabilities aged 14 and younger. In accordance with the statute, proposed paragraph (d) provides that this statement also must include, if appropriate, a statement of interagency responsibilities or linkages if a State or local agency, other than the public agency responsible for the student's education, is responsible for providing or paying for needed transition services.

Agency Responsibilities for Transition Services

Paragraph (a) of the new proposed Sec. 300.347 incorporates the statutory provision that if a participating agency, other than the public agency responsible for the student's education, has failed to provide agreed upon transition services, the public agency responsible for the student's education shall reconvene a meeting of the participants on the IEP team to identify alternative strategies to meet the transition objectives in the student's IEP. The Secretary has added the language "to be implemented" following the reference to alternative strategies so that the public agency responsible for the student's education will take the necessary steps to ensure that each child with a disability receives needed transition services if another State or local agency has failed to provide the student with the agreed upon

PROPOSED REGULATION

Sec. 300.346 Content of individualized education program.
(d) A statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, if determined appropriate for an individual student, beginning at age 14, or younger), including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

Comment. The optional statement of agency responsibilities or linkages to be included in a student's individualized education program is intended to address shared financial responsibility for providing transition services to students with disabilities.

Sec. 300.347 Agency responsibilities for transition services.
(a) If a participating agency, other than the public agency responsible for the student's education, fails to provide agreed upon transition services contained in the individualized education program of a student with a disability, the public agency responsible for the student's education shall reconvene a meeting of all of the participants on the individualized education program team to identify alternative strategies to be implemented to meet the transition objectives that were included in that student's individualized education program.
(b) As used in this subpart, "participating agency" means a State or local agency, other than the public agency responsible for the student's education, that is financially and legally responsible for providing

STATUTORY LANGUAGE

EXPLANATION FOR NPRM

PROPOSED REGULATION

transition services in the student's IEP. In addition, to ensure that other State or local agencies provide transition services to students with disabilities for which they are fiscally and legally responsible, the Secretary proposes to add paragraph (c) to Sec. 300.347. This proposed paragraph clarifies that nothing in this part is intended to relieve any other State or local agency, not responsible for the student's education, of its responsibility for providing or paying for needed transition services for students with disabilities who also meet the eligibility criteria of that agency.

transition services to the student.
(c) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT
(State Plan Requirements)

Comprehensive System of Personnel Development

The Secretary proposes to delete the current regulations at Secs. 300.380-300.385 and 300.387 on the comprehensive system of personnel development (CSPD) and to replace them with proposed Secs. 300.380-300.383. To reflect the changes in the 1990 Amendments and to increase States' flexibility in this area, the Secretary proposes more concise regulations, in lieu of the more detailed provisions on CSPD in the current regulations.

GENERAL
Sec. 613(a)(3)(A)

Each state plan shall ***

(3) describe, consistent with the purposes of this chapter, a comprehensive system of personnel development that shall include --

(A) a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified special education and related services personnel, including --

General

In accordance with statutory amendments to section 613(a)(3) of the Act, the proposed regulations require each State to establish a CSPD and to include in its State plan a description of the procedures and activities relating to this comprehensive State system. Specifically, under the proposed regulations, each State is required to include in its State plan a description of the procedures and activities it uses for ensuring an adequate supply of qualified personnel necessary to carry out this program, a description of the procedures and activities for continuing education and personnel preparation, and a description of the procedures for the development and maintenance of a system of annual data collection on numbers and types of special education and related services personnel,

Sec. 300.380 General. Each State shall-- (a) Develop and implement a comprehensive system of personnel development that --
(1) Meets the requirements in Secs. 300.381-300.383; and
(2) Is consistent with the provisions on personnel standards in Sec. 300.153; and
(b) Include in its State plan a description of the personnel development system required in paragraph (a)(1) of this section.

including leadership personnel, necessary to carry out the purposes of this part.

The Secretary also proposes in Sec. 300.380(a)(2) that each State implement its CSPD consistent with the provisions of Sec. 300.153 (Personnel standards). Under the Sec. 300.153 requirements, each State plan must include the steps the State is taking to upgrade personnel in a specific profession or discipline, if the State educational agency's standards for personnel in that profession or discipline, including standards for temporary or emergency certification, are not based on the highest State certification standards across all State agencies providing special education and related services to children and youth with disabilities.

Since the Secretary anticipates the need for coordination in the implementation of a State's CSPD and its upgrading of personnel in each profession or discipline to meet appropriate State certification standards, the proposed regulations use the terms in Sec. 300.153, if those terms are similar to the language used in section 613(a)(3) of the Act. Therefore, the term "profession or discipline" in Sec. 300.153 is used in lieu of the statutory language "area of specialization" and the term "temporary certification" in Sec. 300.153 is used in lieu of the statutory reference to "other basis."

Consistent with the broadened focus of the State's CSPD, the Secretary proposes to delete the current regulations at Sec. 300.382 regarding inservice training and Sec. 300.321(c) prohibiting use of Part B funds for preservice training. The Secretary believes that the prohibition in Sec. 300.321(c) of the current regulations was based on prior statutory language and legislative history and is not reflected in the current statute or its legislative history. **The Secretary particularly invites public comment on whether these proposed regulations will ensure effective implementation of the revised statutory requirements on CSPD, or whether additional regulatory guidance or other changes are needed.**

STATUTORY LANGUAGE

QUALIFIED PERSONNEL

Sec. 613(a)(3)(A)(iii)

(iii) the development, updating, and implementation of a plan that --

(I) will address current and projected special education and related services personnel needs, including the need for leadership personnel; and

(II) coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities; and

EXPLANATION FOR NPRM

Adequate Supply of Qualified Personnel

Under the new statutory requirements, CSPD has been broadened to include recruitment of qualified personnel. To ensure an adequate supply of qualified personnel, proposed Sec. 300.381(b) adds a new requirement that each State include in its State plan a description of the procedures and activities it will undertake in coordination with other State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare and retain qualified personnel, including personnel from minority and disadvantaged backgrounds, as well as personnel with disabilities.

The Secretary also believes that it is particularly important for each State to develop and implement its CSPD consistent with projected needs for personnel who prepare and train personnel employed in the provision of special education and related services, as well as those who administer and supervise those programs, and to use this information in cooperation with institutions of higher education conducting programs for the preparation of special education and related services personnel, including leadership personnel, and in cooperation with local educational agencies recruiting and hiring special education and related services personnel. Paragraphs (a) and (b) of Sec. 300.381 reflect the importance of addressing these personnel needs.

Because of the significant shortages of qualified personnel necessary to carry out the purposes of Part B, and the increasing involvement of paraprofessionals in the provision of special education and related services, a new paragraph (c) has been added to Sec. 300.381. Under proposed Sec. 300.381(c), each State plan must include a description of the procedures and activities the State will undertake to enable teacher aides and other paraprofessionals who lack full qualifications (including bachelor's degrees) to

PROPOSED REGULATION

Sec. 300.381 Adequate supply of qualified personnel. Each State plan must include a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified personnel (as the term "qualified" is defined in Sec. 300.12), including special education and related services personnel and leadership personnel, necessary to carry out the purposes of this part. The procedures and activities must include the development, updating, and implementation of a plan that --

(a) Addresses current and projected special education and related services personnel needs, including the need for leadership personnel; and

(b) Coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities;

(c) Includes a description of the procedures and activities that the State will undertake to enable teacher aides and other paraprofessionals who lack full qualifications (including bachelor's degrees) to acquire, from institutions of higher education, the necessary credentials for teaching special education.

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STATUTORY LANGUAGE

PERSONNEL PREPARATION/CONTINUING EDUCATION

Sec. 613(a)(3)(B)

(B) a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this subchapter are appropriately and adequately prepared, including --

(i) a system for the continuing education of regular and special education and related services personnel;

(ii) procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(iii) procedures for adopting, where appropriate, promising practices, materials, and technology.

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acquire necessary credentials for teaching special education. The Secretary emphasizes that the intent of this new provision is to encourage, and not to require, States to retrain teacher aides and other paraprofessionals to meet State standards for teaching special education.

Personnel Preparation/Continuing Education

Proposed Sec. 300.382 requires each State plan to include a description of the procedures and activities the State will undertake to ensure that personnel are appropriately and adequately prepared, including procedures for the continuing education of regular education, special education, and related services personnel, including leadership personnel. With respect to continuing education of regular education personnel, the Secretary proposes in paragraph (b) of Sec. 300.382 to make this requirement applicable only to those regular education personnel necessary to carry out the purposes of this part. Proposed Sec. 300.382 retains requirements in the current regulations for adoption of promising practices and dissemination of significant knowledge derived from education, research, and other sources to special education and related services personnel and leadership personnel.

PROPOSED REGULATION

Sec. 300.382 Personnel preparation and continuing education. (a) Each State plan must include a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared. The procedures and activities must include --

(1) A system for the continuing education of regular and special education and related services personnel;

(2) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(3) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(b) As used in paragraph (a)(1) of this section, "regular education personnel" includes only regular education personnel who are necessary to carry out the purposes of this part, by providing education or services to children with disabilities.

STATUTORY LANGUAGE

DATA SYSTEM

Sec. 613(a)(3)(A)(i)

(i) the development and maintenance of a system for determining, on an annual basis--

(I) the number and type of personnel, including leadership personnel, that are employed in the provision of special education and related services, by area of specialization, including the number of such personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure; and (II) the number and type of personnel, including leadership personnel, needed, and a projection of the numbers of such personnel that will be needed in five years, based on projections of individuals to be served, retirement and other leaving of personnel from the field, and other relevant factors;

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Data System

Proposed Sec. 300.383 requires each State plan to include a description of the procedures and activities that the State uses for the development and maintenance of a system for annual data collection on numbers and types of special education and related services personnel, including leadership personnel. In describing the components of a State's system for annual data collection in proposed paragraph (b)(2) of Sec. 300.383, the Secretary adopts, with minor modifications, the list of special education and related services personnel previously included in Sec. 300.126(b), a provision that the Secretary now proposes to delete from these regulations. Because the Department has received several inquiries from parents of children with hearing impairments, including deafness, and from advocacy organizations for these children, the Secretary proposes to add a requirement that the State's system for annual data collection in Sec. 300.383(b) also include interpreters for children with hearing impairments, including deafness.

The Secretary emphasizes that CSPD imposes only a requirement for each State plan to include procedures and activities for a system of annual data collection, and that States no longer will be required to report data on personnel in connection with State plan submissions under this program. However, under section 618 of the Act, States are required to report annually specific data to the Secretary, including data regarding special education and related services personnel. The Secretary stands ready to provide States any needed technical assistance as they implement the data collection and other components of CSPD.

PROPOSED REGULATION

Sec. 300.383 Data system on personnel and personnel development.

(a) General. The procedures and activities required in Secs. 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) Data on qualified personnel.

(1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis--

(i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

(ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

(iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

(2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work study coordinators, and other instructional and noninstructional staff.

STATUTORY LANGUAGE

Sec. 613(a)(3)(A)(ii)

(ii) the development and maintenance of a system for determining, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including --

(I) the numbers of students enrolled in such programs, and

(II) the number who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year; and

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(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) Data on personnel development. The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including --
(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and
(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

CHILD FIND FOR INFANTS AND TODDLERS

None

Child Find For Infants and Toddlers

Under Sec. 300.128 of the current regulations, States are required to identify, locate, and evaluate all children who have disabilities or who are suspected of having disabilities and who are in need of special education and related services. This requirement is known as "child find" and is applicable to children from birth through 21 years of age. Part H of the Act (Early Intervention Programs for Infants and Toddlers with Disabilities) also contains a child find requirement for infants and toddlers (incorporated in the regulations at 34 CFR Sec. 303.321). To facilitate coordination of child find activities for infants and toddlers conducted under Parts B and H of

Sec. 300.128 Identification, location, and evaluation of handicapped children.
Comment 2. Under both Parts B and H of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers, from birth through two years of age, who have disabilities or who are suspected of having disabilities. If the State educational agency and the State's lead agency for the Part H program are different, and if both agencies agree, the State educational agency may designate the State's Part H lead agency as the agency responsible for child find activities for infants and toddlers in accordance with paragraph (b) of this section.

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	the Act, proposed Comment 2 to Sec. 300.128 has been added to specify that if the State educational agency is not the State's lead agency for the Part H program, the State educational agency may designate the State's Part H lead agency as the agency responsible for child find for infants and toddlers if there is agreement by both agencies. However, since the State educational agency remains responsible for ensuring that all Part B child find requirements are met, the Part B State plan must reflect the nature and extent of the participation of the State's Part H lead agency in accordance with Sec. 300.128(b)(2) of the current regulations.	Regardless of whether the State educational agency has designated the State's Part H lead agency as the agency responsible for child find activities for infants and toddlers, the State educational agency shall describe in its Part B State plan, in accordance with paragraph (b)(2) of this section, the nature and extent of the participation of the State's Part H lead agency in child find activities for infants and toddlers. If the State educational agency has designated the State Part H lead agency as the agency responsible for child find activities for infants and toddlers, the State educational agency must maintain general supervision over all child find activities and must ensure that all Part B child find requirements are met.
PROCEDURAL SAFEGUARDS **Additional State Consent Requirements**	**Additional State Consent Requirements** In an effort to expand opportunities for parent participation in decisions regarding their children's special education programs, the Department has issued policy guidance in recent years permitting States to establish State consent requirements for services and activities provided under this part, outside of the consent requirements in this part for preplacement evaluation and initial placement. The Secretary now proposes to incorporate this policy into the regulations for this program by adding a new paragraph (d) to Sec. 300.504 on prior notice and parent consent. Proposed paragraph (d) clarifies that States may establish additional State consent requirements for services and activities provided to children with disabilities under this part, such as reevaluations of a child with a disability or continued placement or change of placement of a child with a disability, only if these additional State parental consent requirements are implemented in accordance with Sec.	**Sec. 300.504 Prior notice; parent consent.** (d) Additional State consent requirements. (1) In addition to the parental consent requirements in paragraph (b)(1) of this section, States may establish parental consent requirements for other services and activities provided under this part, only if -- (i) The requirement in paragraph(b)(2) of this section is met; (ii) Each public agency in the State has procedures for dealing with a parental withholding of consent to any additional State parental consent requirement; and (iii) The procedures required by paragraph (d)(1)(ii) of this section are implemented in all instances in which the public agency believes that the service or activity to which the parent has withheld consent must be provided in order to ensure the continued provision of a free appropriate public education to a child with a disability. (2) Procedures for dealing with a parental withholding of consent to an additional State parental

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300.504(b)(2) of the current regulations and in a manner consistent with a public agency's responsibility to ensure the continued provision of a free appropriate public education to a child with a disability. Paragraph (b)(2) of Sec. 300.504 specifies that any parental consent requirement, other than the consent requirements for preplacement evaluation and initial placement, may not operate as a condition of a benefit or service to a parent or child.

Proposed paragraph (d) also provides that States establishing additional State consent requirements must ensure that public agencies have informal procedures and formal procedures for dealing with a parental withholding of consent to those requirements. These procedures must be implemented in all instances in which the parent withholds consent to an additional State consent requirement and the public agency believes that the activity to which the parent has withheld consent is essential in order for the child to receive a free appropriate public education. The Secretary believes that this proposed regulation balances the important principle of parent participation in their children's special education programs with the obligation of each public agency to ensure the continued provision of appropriate special education and related services to all eligible children with disabilities. A new Comment 3 has also been added to clarify this new requirement.

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consent requirement must include --

(i) Informal procedures for resolving the disagreement between the parent and the public agency; and

(ii) Formal procedures for overriding a parental withholding of consent.

(3) States may designate the due process procedures in Secs. 300.506-300.513 as the formal procedures required by paragraph (d)(2)(ii) of this section.

Comment 3. If a State establishes an additional consent requirement, and the parent withholds consent because of a disagreement with the public agency over one or more components of a child's special education program -- for example, the provision of physical therapy services -- the public agency is not relieved of its obligation to implement the other components of the child's program that are in agreement, notwithstanding the parental withholding of consent. This is because consent may not be made a precondition to any benefit to a parent or child under this part, except for preplacement evaluation and initial placement.

Although public agencies must have formal procedures for dealing with parental withholding of consent to an additional State parental consent requirement, they need not implement those procedures in every situation. Public agencies should use their established informal procedures, as appropriate, provided those informal procedures do not operate to deny or delay access to their established formal procedures. However, if, as a result of its informal process, a public agency determines that it is appropriate to reconsider or revise its proposed action, based upon a review of information provided by the parents or other new information, indicating that the child's current evaluation, individualized education program, or placement is appropriate, the public agency would not be required to initiate formal procedures. However, if the disagreement has not been resolved through informal procedures, then the public agency must initiate formal procedures designated for overriding a parental withholding of consent.

STATUTORY LANGUAGE

AVAILABILITY OF HEARING DECISIONS TO THE PUBLIC

Sec. 615(d)

(d) Enumeration of rights accorded parties to hearings

Any party to any hearing conducted pursuant to subsections (b) and (c) of this section shall be accorded -- *** (4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) of this title and shall also be transmitted to the advisory panel established pursuant to section 614(a)(12) of this title.

OFFICIALS CONDUCTING STATE-LEVEL REVIEWS

None

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Availability of Hearing Decisions to the Public

The Handicapped Programs Technical Amendments Act of 1988 amended section 615(d) of the Act by adding a new requirement that findings of fact and hearing decisions, with the deletion of personally identifiable information, be made available to the public. The current regulations, at Sec. 300.508(a)(5), provide that a party to the hearing has the right to obtain written findings and a hearing decision, and that written findings and hearing decisions, with the deletion of personally identifiable information, must be transmitted to the State advisory panel established under Subpart F. Therefore, the Secretary proposes to amend paragraph (a)(5) of Sec. 300.508 by adding the new statutory requirement.

The Secretary invites public comment on whether additional regulatory guidance is needed to implement this statutory change.

Officials Conducting State-Level Reviews

Since the regulations for this program were published in 1977, a number of courts have construed the requirements for impartiality of State-level review officials. Relying on the legislative history of Public Law 94-142, courts have concluded that the Congress intended to prohibit members of State boards of education, chief State school officers, and other State employees involved in the education or care of the child from serving as review officials if initial due process hearing decisions are appealed to the State educational agency. See e.g., Helms v. McDaniel, 657 F.2d 800 (5th Cir.) 1981. However, even with this prohibition, the legislative history of Public Law 94-142 emphasizes that the State educational agency remains responsible for ensuring that decisions in State-level reviews satisfy all

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Sec. 300.508 Hearing rights.
(a) ***
(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information shall --
(i) Transmit those findings and decisions to the State advisory panel established under Subpart F; and
(ii) Make those findings and decisions available to the public.

Sec. 300.510 Administrative appeal; impartial review.

(c) The official conducting the review may not be the chief State school officer, a member of the State board of education, or an employee of the State educational agency or any other public agency in the State that is involved in the education or care of the child.

Comment 1. Although the individuals identified in paragraph (c) of this section are prohibited from conducting State-level reviews of hearing decisions, the State educational agency remains responsible for ensuring that the final decision of the review meets all applicable requirements of this section.

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applicable Part B requirements. Therefore, the Secretary proposes to add a new paragraph (c) to Sec. 300.510 and has revised Comment 1 following the section to clarify which officials may not conduct State-level reviews under this program.

State Complaint Procedures

On August 18, 1988, the Secretary published a Notice of Proposed Rulemaking at 53 FR 31580 proposing to transfer the State complaint procedures from 34 CFR Secs. 76.780-76.782, with minor modifications, to the program-specific regulations to which they relate. Because States receive an especially high volume of the Education Department General Administrative Regulations (EDGAR) complaints alleging violations of requirements of Part B of the Act and this part, the Secretary proposes to incorporate State complaint procedures in proposed Secs. 300.660-300.662. Based on the Department's administration of this problem the Secretary believes that a need exists for greater consistency across State complaint procedures under Part B. **The Secretary particularly invites public comment from States, parents, and other interested individuals on the modifications to the EDGAR complaint procedures in proposed § 300.651(a)(2)-(4) and (b), which are described below. Specifically, the Secretary would like to know whether States believe that these modified procedures would impose undue burdens on compliance activities; whether States currently are using these modified procedures; and to the extent the States are not currently using these modified procedures, the burdens that States anticipate. The Secretary also invites public comment from parents and other interested individuals as to whether there is a need for these modified procedures.**

If State complaint procedures are incorporated in the final regulations for this program, a technical change will be made to § 300.3 of the current regulations (Regulations that apply to assistance to States for education of handicapped children) to exclude §§

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	76.780-76.782 from the provisions of part 76 (State-Administered Programs) that apply to this program. In these proposed regulations, the Secretary also addresses specific aspects of State complaint procedures as they relate to complaints alleging that a public agency is violating a requirement of Part B of the Act and this part.	
COMPLAINT PROCEDURES THAT A STATE MUST ADOPT None	**Complaint Procedures That A State Must Adopt** Proposed Sec. 300.660 incorporates the provisions of Sec. 76.780 of EDGAR, but adds a new paragraph (d), which requires that each State educational agency inform parents and other interested individuals about the availability of procedures in Secs. 300.660-300.662. By this proposed change, the Secretary requires States to provide parents with information regarding how and where to file complaints alleging violations of requirements of Part B of the Act and this part, as well as information regarding the minimum complaint procedures in the State.	**Sec. 300.660 Adoption of State complaint procedures.** Each State educational agency shall adopt written procedures for -- (a) Receiving and resolving any complaint that any public agency is violating a requirement of Part B of the Act or of this part; (b) Reviewing an appeal from a decision of a public agency with respect to a complaint; (c) Conducting an independent on-site investigation of a complaint if the State educational agency determines that an on-site investigation is necessary; and (d) Informing parents and other interested individuals about the procedures in Secs. 300.660-300.662.
MINIMUM STATE COMPLAINT PROCEDURES None	**Minimum State Complaint Procedures** The Secretary proposes to modify the minimum State complaint procedures now in Sec. 76.781 of EDGAR by adding four provisions in proposed Sec. 300.661. The Secretary's experience has indicated that many complainants have not been consulted in connection with complaint resolutions under this program in instances in which their input could have been helpful in facilitating the complaint resolution. Hence, proposed paragraph (a)(2) requires each State educational agency to have procedures for soliciting input from the complainant as part of its minimum complaint procedures.	**Sec. 300.661 Minimum State complaint procedures.** Each State educational agency shall include the following in its complaint procedures: (a) A time limit of 60 calendar days after the State educational agency receives a complaint to -- (1) Carry out an independent on-site investigation, if necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Review all relevant information and make an

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The Secretary also has found that some States have adopted findings issued by the public agency involved in the complaint without making an independent assessment of the allegations in the complaint. In addition, in a number of instances, complainants have been provided with written decisions that either do not address each of the allegations in the complaint or do not contain an explanation of the findings of fact and conclusions. Therefore, proposed paragraphs (a)(2)-(4) have been incorporated in the proposed regulations to facilitate a State's handling of complaints in proposed Sec. Under the modified procedures, in proposed Sec. 300.661, each State educational agency is required, within the 60-calendar-day time limit, to: (1) conduct an independent on-site investigation, if necessary; (2) obtain information from the complainant, either orally or in writing, regarding the allegations in the complaint; (3) review that information in order to make an independent determination; and (4) issue to the complainant a written decision that addresses each of the allegations in the complaint and that contains findings of fact and conclusions, including the reasons for the State educational agency's final decision.

The proposed regulations, at Sec. 300.661(a) and (b), provide that a State educational agency shall issue a written decision within 60 calendar days of receipt of the complaint, unless exceptional circumstances warrant an extension of time. The Secretary believes that the 60-calendar-day time limit can and should be met in the great majority of situations. These proposed regulations also include a requirement at Sec. 300.661(c) for the State educational agency to establish procedures that must be used, if needed, to ensure effective implementation of its final decision.

The provision at 34 CFR Sec. 76.781(c) of EDGAR, regarding the right to request the Secretary to review the final State decision, has been retained at proposed Sec. 300.661(d) of these proposed

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independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--

(i) Findings of fact and conclusions; and

(ii) The reasons for the State educational agency's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the State educational agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right to request the Secretary to review the State educational agency's final decision.

Sec. 300.662 Filing a complaint.

An organization or individual may file a written signed complaint with a State educational agency. The complaint must include --

(a) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and

(b) The facts on which the statement is based.

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	regulations. The Secretary believes that these proposed modifications of the EDGAR complaint procedures will ensure that State educational agencies meet their responsibility to resolve any complaint that a public agency is violating a requirement of Part B of the Act or this part.	

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